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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-431

NADINE GODSY,
Appellee,

vs.

SHERMAN M. GODSY, JR.,
Appellant.

ON APPEAL FROM THE MISSOURI COURT OF APPEALS
KANSAS CITY DISTRICT

JURISDICTIONAL STATEMENT

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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. .....

NADINE GODSY,
Appellee,

VS.

SHERMAN M. GODSY, JR.,
Appellant.

ON APPEAL FROM THE MISSOURI COURT OF APPEALS
KANSAS CITY DISTRICT

JURISDICTIONAL STATEMENT

Appellant appeals from the final order of the Missouri Court of Appeals, Kansas City District, reversing the judgment of the Circuit Court of Jackson County, Missouri, and reinstating a default judgment of divorce in favor of Appellee. The Order of the Court of Appeals was entered on April 3, 1978. On May 1, 1978 the Missouri Court of Appeals, Kansas City District, overruled Appellant's timely Motion for Rehearing and Transfer to the Supreme Court of Missouri. Thereafter, the Supreme Court of Missouri, on June 15, 1978, denied Appellant's timely filed application to transfer said cause to the Supreme Court of Missouri from the Missouri Court of Appeals, Kansas City District.

OPINIONS BELOW

The opinion of the Missouri Court of Appeals, Kansas City District, is set forth at Appendix A to this statement.

JURISDICTION

This cause arises from a default judgment of divorce originally entered in the Circuit Court of Jackson County, Missouri. Thereafter, Appellant filed a Motion to Set Aside Judgment in the original cause and a separate equity action. Appellant's Motion and his Petition in Equity asked that the default judgment be set aside. The default judgment had awarded Appellee the sum of One Hundred Thousand Dollars ($100,000.00) alimony in gross, attorney's fees, suit money and One Hundred Fifty Dollars ($150.00) per week as child support. The default judgment was taken against Appellant without Appellant having been notified to appear for a hearing on the divorce matter and without Appellant or his counsel being present at the hearing wherein the default judgment was taken. Appellee took an appeal from the orders setting aside the default judgment and Appellant cross-appealed concerning matters of attorney's fees and the appointment of a receiver for the marital property. The Missouri Court of Appeals, Kansas City District, in its opinion of April 3, 1978, reversed the judgments of the trial court and ordered the default judgment be reinstated.

A Notice of Appeal to this Court was filed in the Missouri Court of Appeals, Kansas City District on September 8, 1978, said Court being the Court wherein the

Court is possessed of the record, all pursuant to Rule 10 of the Rules of this Court. A copy of the Notice of Appeal to the Missouri Court of Appeals, Kansas City District is attached to this Jurisdictional Statement as Appendix B.[1] The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. 1257(2). Cases which sustain the jurisdiction of this Court include *Dohnke-Walker Milling Co.* v. *Bondurant,* 257 U.S. 282 (1921); *Fiske* v. *Kansas,* 274 U.S. 380 (1927); *Missouri ex rel. Missouri Ins. Co.* v. *Gehner,* 281 U.S. 313 (1930); *Brinkerhoff-Farris Trust and Savings Co.* v. *Hill,* 281 U.S. 673 (1930); *Railway Express Agency* v. *Virginia,* 336 U.S. 106 (1949); *Lathrop* v. *Donohue,* 367 U.S. 106 (1961).

Alternatively, should this Court determine that an appeal does not lie under 28 U.S.C. 1257(2), Appellant respectfully moves this Court to treat this Jurisdictional Statement as a Petition for Certiorari. 28 U.S.C. 2103. Cases which sustain this alternative procedure are *Garrity* v. *New Jersey,* 385 U.S. 493 (1967); *Slagle* v. *Ohio,* 366 U.S. 259 (1961).

QUESTIONS PRESENTED BY THIS APPEAL

I. Whether Appellant was denied due process of law, when, without notice, without opportunity to be heard and without the opportunity to be present and to be represented by counsel, the Court entered a default judgment against Appellant in an amount exceeding One Hundred Thousand Dollars ($100,000.00).

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1. A timely Notice of Appeal was also filed with the Supreme Court of Missouri on or about September 11, 1978, should this Court determine that the Missouri Supreme Court is the Court "possessed of the record."

STATEMENT

This appeal stems originally from an action brought initially against Appellant in the Circuit Court of Jackson County, Missouri, for divorce.

After the matter pended for a time, Appellee noticed up Appellant for a hearing on February 15, 1973, with respect to certain motions for temporary support and the like which were pending in the case. There was no notice to Appellant that the matter of the divorce itself would be taken up. Appellant's then counsel was to be out of town, so notified the Appellee's attorney, and notified Appellant not to be present. An associate of Appellant's then attorney appeared on February 15, 1973, before the Trial Court and applied for a continuance on behalf of Appellant. The application for continuance was denied. The Court then and there—without notice to Appellant or his counsel and in fact without Appellant or his counsel even being present—struck Appellant's pleadings and ordered a default hearing on the *divorce* to proceed immediately. Thereupon, Appellee obtained the divorce, a judgment for over One Hundred Thousand Dollars ($100,000.00) in attorney fees, suit money and alimony, and custody of the minor child, together with child support.

Appellant's then counsel subsequently appealed the default judgment; the appeal was dismissed because it was untimely filed. After denial of certiorari by this Court, 423 U.S. 887, Appellant initiated two proceedings attacking the default judgment. After evidentiary hearings the Court sustained both attacks and entered Orders setting aside the default judgment. Appellee subsequently appealed those orders to the Missouri Court of Appeals, Kansas City District. It is the judgment on that appeal that is the subject of this application to this Court.

Robert C. Jones, attorney for Sherman Godsy in the divorce action, testified that during December 1972 and January 1973 he carried on extensive settlement negotiations with Nadine Godsy's attorney. In January, 1973, there were a number of motions for contempt and requests for modifications of temporary alimony and child support allowance earlier made. Prior to February 15, 1973, Mr. Jones received a copy of the court docket for that date indicating that certain motions then pending would be heard by the Court on February 15, 1973. A "contested divorce" hearing was not noted on the docket although it was the custom and practice of the Court Clerk's office to so notate the docket.

Mr. Jones did not understand that the final divorce hearing would be had on February 15, 1973 although he admitted that the date had been discussed as a tentative trial date during January 1973. On January 23, 1973, Jones sent a letter to the Domestic Relations Clerk advising her that the matter might be removed from the docket of February 15, 1973. Jones' belief that only motions were to be heard on that date was reinforced by a letter from Nadine Godsy's attorney, Frank Krenzky, dated January 29, to the Court asking the Court to

> "Please instruct Mary Wren to leave the matter scheduled as you previously directed on the 15th of February and allow as a hearing of *the motions pending* in this cause as soon as the Court's time will allow." (emphasis added).

The pending motions had been continued numerous times and Jones thereafter left for vacation to Hawaii where he was on February 15, 1973. Before leaving he advised Sherman Godsy that no hearing would be held on that date. No other attorneys in Jones' office had worked on the Godsy case or were familiar with the matters involved.

On February 15, 1973, Nadine Godsy and her attorneys appeared in Court. Sherman Godsy did not appear, having been again advised by Jones' law partner that he need not appear. Another attorney in Jones' office, a Mr. Simms, did appear and requested a continuance, which was denied. He advised the Court that Jones was out of town but would be present the first part of the following week. During the discussion concerning the continuance request, Nadine Godsy's attorney indicated that if it had been Simms rather than Jones asking for a continuance to the following week that he would have had no objection.

At the default hearing thereafter held, neither Sherman Godsy, Jones nor any attorney from his office was present. The Court made orders concerning custody and support and entered a decree of divorce. Nadine Godsy testified that the jointly held real property was worth at least Five Hundred Thousand Dollars ($500,000.00); she further testified that the parties' taxable income for 1971 was $40,000.00 to $50,000.00. There was no testimony concerning Sherman Godsy's income during the period between that date and the hearing. At the instant hearing Sherman Godsy testified that his 1972 income was Twenty-three Thousand Six Hundred Fifty-Five Dollars ($23,655.00). At the conclusion of the default divorce hearing the Court awarded Nadine Godsy a judgment for maintenance in gross of One Hundred Thousand Dollars ($100,000.00).

Willie McCann, a qualified appraiser, opined that the jointly held real estate had a fair market value in 1973 of One Hundred Ten Thousand ($110,000.00). Nadine Godsy reiterated her testimony that the property was worth Five Hundred Thousand Dollars ($500,000.00). A Mr. Maynard testified on behalf of Nadine Godsy that he knew of potential buyers who would pay Six Hundred Thousand Dollars ($600,000.00) for the property, although he had *not* discussed price with those potential buyers nor had they, or Maynard, closely inspected the property.

The Appeals Court ruled that the Trial Court erred in setting aside the default judgment and ordered the judgment reinstated. A timely Motion for Rehearing and for Transfer to the Supreme Court of Missouri was denied. Thereafter, Appellant made a timely Application for Transfer to the Supreme Court of Missouri which was denied on June 15, 1978.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The questions presented are substantial and of broad public importance. They involve the fundamental guarantee of due process as provided by the Fourteenth Amendment to the United States Constitution and touch upon the rights of litigants everywhere. Most importantly, the questions involved here touch upon the financial livelihood of this Appellant, now facing financial ruin by reason of a judgment of over One Hundred Thousand Dollars ($100,000.00) rendered by default against him.

The question concerns whether without notice and opportunity to be heard a Court may simply strike a party's pleadings and render a judgment against him in an amount of over One Hundred Thousand Dollars ($100,000.00). Under the doctrines as enunciated in *Dohnke-Walker Milling Co.* v. *Bondurant* and *Fiske* v. *Kansas*, cited *supra*, the Court has jurisdiction to hear this appeal. Alternatively, Appellant respectfully requests that this Court consider the matter as a Petition for Writ of Certiorari should the Court decide an appeal does not lie. 28 U.S.C. 1257(2).

1. It Is a Violation of Appellant's Rights Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution to Enter a Default Judgment Against Him Without Notice, Without the Opportunity to Be Heard and Without the Opportunity to Be Present and to Be Represented by Counsel.

The only notice given to Appellant and his then counsel regarding Trial Court action on February 15, 1973, indicated that only motions would be heard. The Court's Notice did *not* indicate that a final hearing would be held on the divorce itself. Appellant's counsel did not appear, nor did Appellant appear, having been advised that it was not necessary for him to do so. However, before one's rights or property are taken from him, due process requires a hearing prior to the seizure and forfeiture. *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.*, 419 U.S. 601, 95 S.Ct. 719, 42 L.Ed.2d 751; *Mitchell* v. *W. T. Grant Co.*, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406; *Gross* v. *Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725; *Bell* v. *Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90.

The Fourteenth Amendment requires notice and the opportunity for a hearing before one's interest in any type of property is taken away. "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin* v. *Hale*, 1 Wall. 223, 233.

This right to be heard insures fair play to the individual and protects his use and possession of property from arbitrary encroachment, minimizing unfair or mistaken deprivations of property. "(T)he prohibition against deprivation of property without due process of law reflects the high value, imbedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of government intereference." See *Lynch* v. *Household Finance Corp.*, 405 U.S. 538, 551.

"The requirement of notice and an opportunity to be heard raises no inpenetrable barrier to the taking of a person's possessions. But the fair process of decision making that it guarantees works, by itself, to protect against arbitrary deprivation of property. For when a person has an opportunity to speak up in his own defense, and when the State will listen to what he has to say, substantially unfair and simply mistaken deprivations of property interests can be prevented." *Fuentes* v. *Shevin*, 407 U.S. 67, 81.

And, the notice must be sufficient to offer the party subject to deprivation the opportunity to be heard, to prevent any unfair or mistaken deprivations of property. "Due process is afforded only by the kinds of notice and hearing that are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property. . . ." *Fuentes, supra,* citing cases.

Under all these facts, Appellant was denied due process of law. The cases cited on the requirement of adequate notice and an adequate hearing with counsel are applicable here. As was said in *Krieber* v. *Krieber*, 420 S.W.2d 376 at p. 379:

> "Notice and a hearing, or an opportunity to be heard, have long been considered essential to due process, to a decision on the merits of a cause and to the deprivation of rights and property."

Those rights and that opportunity have been denied Appellant by the state court decision below.

In conclusion, the question presented is so substantial as to require plenary consideration with brief on the merits and oral argument for its resolution.

CONCLUSION

For the reasons stated, probable jurisdiction should be noted.

Respectfully submitted,

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APPENDIX

APPENDIX A

JUDGMENT ENTRY SETTING ASIDE DECREE OF DIVORCE

On February 13, 1976 Order sustaining Motion to set aside judgment was filed in the office of the Circuit Clerk. Said Order is as follows:

"ORDER SUSTAINING DEFENDANT'S MOTION TO SET ASIDE JUDGMENT OF FEBRUARY 15, 1973

Now, on this 13th day of February, 1976, the Court, having before it Defendant's Motion to Set Aside this Court's Judgment of February 15, 1973, and having heard and considered the evidence produced by both defendant and plaintiff, and, good cause appearing, it is hereby ordered that Defendant's Motion to Set Aside the Judgment entered on February 15, 1973 in favor of plaintiff is sustained and said Judgment is set aside and for naught held.

IT IS SO ORDERED."

FILED FEBRUARY 13, 1976

On March 2, 1976 Motion for Attorneys' Fees Pendent Lite was filed in the office of the Circuit Clerk, as follows:

"MOTION FOR ATTORNEYS' FEES PENDENTE LITE

Comes now the plaintiff and moves the Court for an award for attorneys' fees, suit money, costs and expenses pendente lite as follows:

1. An award for the services of her attorney James R. Hunsucker performed before February 15th, 1973 in the amount of $4,320.00 plus interest from February 15th, 1973 at the rate of 6% per annum.

2. An award for services of her attorney James R. Hunsucker from February 15th, 1973 to date in the sum of $2,000.00 less credit of $500.00 previously awarded leaving a balance of $1500.00.

3. An award for the services of her attorney Frank R. Krenzky performed before February 15th, 1973 in the sum of $5,932.00 plus interest from February 15th, 1973 at the rate of 6% per annum.

4. An award for services of her attorney Frank R. Krenzky from February 15th, 1973 to date in the sum of $2,000.00 less credit of $500.00 previously awarded leaving a balance of $1,500.00.

5. An award for the services of her attorneys Blumer & Nally from February 20th, 1973 to date in the sum of $35,000.00 less credit of $1,500.00 previously awarded leaving a balance of $33,500.00.

6. An award for deposition costs of $266.60.

7. An award for expenses of brief printing of $319.14 less $100.00 previously awarded leaving a balance of $219.14.

8. An award for execution publication expenses of $528.98.

9. An award for appellate filing fee expenses in the sum of $60.00.

10. An award for expenses for a transcript, brief printing, and appeal costs in connection with the appeal of the Court's Order of February 13th, 1976 in the sum of $1,000.00.

11. An award for attorneys' fees for the services of her attorney James R. Hunsucker, Frank R. Krenzky and Blumer & Nally in connection with the appeal from the Court's Order of February 13th, 1976 in the sum of $5,000.00.

12. An award for the services of her attorneys Blumer & Nally, James R. Hunsucker and Frank R. Krenzky, necessitated by the prosecution of plaintiff's alternative motions for possession of the marital property, the appointment of a receiver and an accounting, which services are expected to be of the reasonable value of $5,000.00.

13. That the attorneys' fees, costs and expenses set out above are reasonable and necessary for the protection of plaintiff's claim; that plaintiff has no funds or income for which to pay said expenses; that defendant has money, assets, income and resources from which he can pay said expenses and equity and justice require that plaintiff be awarded the sums requested.

FILED MARCH 2, 1976

* * *

On April 5, 1976, the Court filed an Order Sustaining Petition to Set Aside Judgment in Case No. DR 75-4195.

This order is as follows:

"ORDER SUSTAINING PETITION TO SET ASIDE JUDGMENT

This Court, having considered all of the evidence to wit:

The Stipulation of the Parties filed with the Court, and, good cause appearing, it is hereby ordered that

this Court's judgment of February 15, 1973, in Case No. 749,413, Circuit Court of Jackson County, Missouri, is set aside in its entirety and held for naught.

It is so ordered.

Date: April 5, 1976."

FILED APRIL 5, 1976

Nos. KCD 28804, 28805, 28689

IN THE MISSOURI COURT OF APPEALS
KANSAS CITY DISTRICT

NADINE GODSY,
Appellant-Respondent,

vs.

SHERMAN M. GODSY, JR.,
Respondent-Appellant.

Appeal From the Circuit Court of Jackson County
Honorable Lewis W. Clymer, Judge

(Filed April 3, 1978)

Before Somerville, P.J., Turnage, J. and Mason, S.J.

The issues raised on these cross appeals necessitate a detailed recitation of the chronology of events and evidence which bring these antagonists, who were once fond enough of each other to get married and conceive one child, to this Court. The parties will sometimes be referred to in the roles they occupied in the trial court. Our review is as promulgated in Murphy v. Carron, 536 S.W.2d 30 (Mo. banc 1976).

The parties were married on May 1, 1964, from which union a male child was born in 1966. On July 7, 1971, Nadine Godsy filed a petition for divorce alleging the necessary elements to obtain that relief under the statutes then in force. On July 14, 1972, Sherman M. Godsy, Jr., filed his First Amended Answer and Cross-Petition, with leave of court, likewise alleging the necessary elements which would entitle him to the divorce, if proven. In December, 1972, the parties and the trial judge agreed to a special setting on February 15, 1973, to try the case

on the merits. Six to eight continuances had previously been requested and granted. After obtaining the special setting the parties, through their attorneys, continued to negotiate a property settlement agreement, which negotiations were fruitless, mainly because defendant refused to sign an agreement which contained his previously accepted terms.

On January 23, 1973, defendant's then counsel wrote the docket clerk that it appeared the case would be resolved without trial and to remove the case from the trial docket for February 15th. On January 29, 1973, plaintiff's then counsel directed a letter to the trial judge, with a copy to the docket clerk, disputing the assertions of his opponent and requesting that the matter be retained on the trial docket. Under date of February 5, 1973, but not mailed until February 7th, and received by plaintiff's counsel on February 8th, defendant's attorney advised that he would not be able to try the case on February 15th as he and his family were leaving on February 10th for a ten day vacation to Hawaii and suggested the trial be postponed to the end of the month. Plaintiff's attorney responded by return mail, and personally, that he would not agree to a continuance and that he and his client would appear on trial date prepared for trial. He also verbally apprised the partner of defendant's counsel of his intentions. Defense counsel, or his partner, advised defendant that he need not appear for trial as the case was going to be continued.

Plaintiff and her counsel appeared as scheduled. Neither defendant nor his retained counsel appeared. An office associate of defendant's counsel appeared and orally moved for a continuance. Judge Clymer, after noting the many continuances and the special setting, denied the continuance and the case was heard as a non-contested matter. Judgement was entered granting plaintiff the divorce, custody of the minor child and alimony in gross of $100,000.00. In addition plaintiff received a judgment of $4,320.00 for attorney fees for her first attorney and $5,932.00 for her trial attorney. The alimony and child support judgment was based upon testimony heard by the Court that the parties owned real estate valued at $500,000.00 upon which they lived and operated three pay fishing lakes. The fishing lakes provided annual taxable income of some $45,000.00. In addition the parties owned personal property in excess of $100,000.00 value. The attorney fee awards were also supported by the necessary and competent evidence.

On February 28, 1973, defendant timely filed his motion for new trial, which was subsequently overruled. He thereafter filed his notice of appeal to this Court, but the appeal was dismissed as not being timely filed (reported at 521 S.W.2d 449). Thereafter, certiorari was denied by the United States Supreme Court at 423 U.S. 887, 96 S.Ct. 181, 46 L.Ed. 2d 119.

By this time both parties had changed legal counsel to their present attorneys. On August 5, 1975, defendant caused to be filed in the divorce case (No. 749,413) a pleading denominated as a Motion to Set Aside Judgment (hereafter "Motion"). The next day Mr. Godsy, as plaintiff, filed a pleading entitled Petition to Set Aside Judgment and for an Injunction (hereafter "Petition") (Case No. DR75-4195). The Motion and the Petition are almost identical in context and content. We will summarize, and at times paraphrase, the allegations contained in each pleading.

In the Motion defendant pleaded (1) the Motion was pursuant to Rules 74.32 and 74.78, in the nature of coram nobis, and that the judgment should be set aside for fraud; (2) the entry of default judgment on February 15, 1973;

(3) the filing of the Motion within three years; (4) that Rule 74.32 permits setting aside judgments within three years; (5) that the judgment was secured as a result of a misapplication of, and failure to follow, established rules of procedure; (6) that the clerk of the court had published a docket advising defendant's counsel that the case was on a motion to modify docket and that a motion for additional temporary alimony and child support was then pending, which plaintiff's counsel advised was going to be heard; (7) no notice of entry of order and judgment as provided by Rule 74.78; (8) that the judgment entry and transcript shows no notice was given to defendant or his counsel; (9) that the court exceeded its jurisdiction in entering default judgment with the motions for temporary monies and to strike defendant's pleadings being on file and not ruled; (10) defendant's due process rights under both the United States and Missouri Constitutions were violated by lack of adequate notice; (11) lack of competent and adequate evidence to permit entry of judgment and error in denying defendant's request for a continuance; (12) that evidence outside the record was available to support setting aside the default judgment; (13) that fraud was perpetrated upon defendant and his counsel by plaintiff's counsel agreeing to a continuance and that the case was settled and no hearing was necessary, and that only motions to modify would be heard; (14) that defendant was not represented at the hearing by his attorney in violation of the 6th and 14th Amendments of the United States Constitution and Article I, Section 10, and Article I, Section 14, of the Missouri Constitution; (15) that defendant was told by his counsel not to appear and was thereby free of personal fault and negligence; (16) defendant's counsel did not properly represent him which constituted a fraud in procurement of the judgment; (17) that the judgment was procured as the result of unavoidable accident or excusable

mistake of defendant who did not appear because of advice of counsel, which counsel was inattentive, inadequately prepared and gave bad advice; (18) defendant had no adequate remedy at law; and (19) that defendant had a meritorious defense based on the marital misconduct of plaintiff (which was definitively pleaded).

The Petition alleged the same grounds and, additionally, asserted that Mrs. Godsy had caused various attachments, levies and executions to issue against the real estate owned by the parties in order to collect the judgments rendered in her favor in the divorce case. In this case plaintiff (Mr. Godsy) prayed that the default judgment be set aside and that defendant (Mrs. Godsy) be enjoined from further judgment collection efforts. Defendant did not file an answer to this petition until March 27, 1976, after hearing, judgment and filing of notice of appeal. She appeared at the hearing on the Motion and Petition and offered evidence, without objection. In this posture the failure to file responsive pleadings is deemed waived. Gregg v. Johnston, 546 S.W.2d 754 (Mo.App. 1977).

The Motion and Petition were consolidated for hearing in the trial court, and the hearing was commenced on September 12, 1975, but not completed. The evidentiary hearing was completed January 19, 1976, and taken under advisement. On February 13, 1976, Judge Clymer entered his order sustaining the Motion to Set Aside Judgment (as filed in Case No. 749,413). It is from this order that Mrs. Godsy appeals in Case No. KCD-28689.

On April 5, 1976, the parties filed a stipulation that the trial court could consider all the evidence heard in both cases in ruling on the Petition to Set Aside Judgment, in ruling on the Motion for Attorney Fees Pendente Lite, filed on March 2, 1976, and the Motion for the Appointment of a Receiver, filed also on March 2, 1976. On April 5,

1976, an order was entered awarding attorney fees of $4,320.00, plus 6% interest from February 15, 1973, for services performed by plaintiff's first attorney; $5,932.00, plus 6% interest from February 15, 1973, for services performed by plaintiff's second attorney; and $4,000.00 for services performed by plaintiff's present attorney. On the same date the Court appointed a Receiver for the marital property and business, but that Receiver never qualified or served. It is from these orders that Mr. Godsy appeals in case No. KCD-28804. Also, on the same date the Court entered an order sustaining the Petition to Set Aside Judgment (as filed in Case No. DR75-4195). No injunctive relief was ordered. It is from this order that Mr. Godsy appeals in Case No. KCD-28805. No findings of facts and conclusions of law were requested or filed in support of the various judgments appealed from. These appeals have been consolidated. With this background and the delineation of the present status of the parties we will discuss the evidence presented at the hearing on the Motion and the Petition as is necessary to rule on the issues presented in these cross-appeals.

Evidence was adduced as to the pretrial activities of the respective counsel and the reason why defendant and his counsel did not appear for the scheduled hearing, as above enunciated. Mr. Godsy testified as to the premarriage acquisition of a portion of the real estate and the post-marriage acquisition of the remainder and the conveying of title to all of the real estate to him and his wife as tenants by the entirety. No evidence was presented to overcome the presumption of gift. He opined the value of the real estate and improvements to be no more than $115,000.00 and offered an expert witness who testified to the same effect. He also denied that the fishing lakes, and his hauling of fish during the winter months, produced annual taxable income as testified to

by Mrs. Godsy in the divorce proceeding. Taxable income declared on the 1971, 1972 and 1973 individual returns filed by Mr. Godsy supports his testimony. He also testified that the allegations pleaded that his wife was not the innocent and injured party were true. Nadine Godsy, called as a witness by Sherman Godsy, reiterated her opinions as to property values and income in conformance with her testimony at the divorce hearing. She also offered a witness who testified that in September, 1973, he had several corporate clients, each of whom were willing to pay the Godsys $600,000.00 for the real estate (70 plus acres), and communicated that to Mrs. Godsy and the attorneys for the respective parties. The parties also stipulated that the reasonable charges for legal services performed by Mr. Blumer in representing Mrs. Godsy on the earlier appeal and in the United States Supreme Court was $2,625.00 plus an expense of $230.00 for the printing of the briefs. The testimony also developed that Mrs. Godsy was unemployed and without funds. This is a summarization of the lengthy evidentiary hearing, but fairly and adequately condenses the evidence adduced, and is the essence of that evidence.

We will first consider the ruling of the trial court on the Motion, excluding from that consideration for the present time those allegations which seek to invoke equity jurisdiction. It must be remembered that the Motion was filed on August 5, 1975, almost two and a half years after the entry of judgment and almost two years after the judgment became final. With certain exceptions, which we will hereafter discuss, a final judgment is beyond the reach of the trial court to alter or vacate, Rule 81.05, V.A.M.R.; Hughes v. St. Louis National League Baseball Club, Inc., 359 Mo. 993, 224 S.W.2d 989 (Mo. banc 1949); Highland Gardens Nursery, Inc. v. North American Developers, Inc., 494 S.W.2d 321 (Mo. 1973); Perryman v. Perry-

man, 507 S.W.2d 671 (Mo. App. 1974). The allegations in the Motion that might be perceived as asserting a meritorious defense or excusable neglect, which factors are considered in that class of cases exemplified by Stieferman v. Stieferman, 219 S.W.2d 864 (Mo. App. 1949); Hinson v. Hinson, 518 S.W.2d 330 (Mo.App. 1975); and Krieber v. Krieber, 420 S.W.2d 376 (Mo.App. 1967), are not pertinent or controlling here because, as stated, the judgment of February 15, 1973, was a final judgment when the Motion was filed in August, 1975, and the trial court was without jurisdiction to alter or vacate that judgment, Wiseman v. Lehmann, 464 S.W.2d 539 (Mo.App. 1971); Bradley v. Bradley, 295 S.W.2d 592 (Mo.App. 1956); Godsy v. Godsy, supra.

Further consideration requires that we note that the Motion may be treated "as a proceeding in equity constituting an attack upon a divorce decree which the court below had equity jurisdiction to consider," S..... v. S....., 490 S.W.2d 344 (Mo.App. 1973). We will, therefore, consider both the Motion and Petition in the context of invoking equity jurisdiction. We will view both pleadings from the five directions urged by the respondent, Sherman Godsy, who relies heavily on the case of Diekmann v. Associates Discount Corporation, 410 S.W.2d 695 (Mo. App. 1966). In that case it is stated, "[O]ur procedural arsenal holds six weapons designed to bring down a final default judgment: [1] a separate suit in equity, [2] a statutory petition for review, [3] a nunc pro tunc order, [4] a motion in the nature of a writ of error coram nobis, [5] a motion showing fraud practiced on the court, and [6] a motion showing irregularity on the face of the record," supra, at page 700. Respondent concedes a nunc pro tunc order was not the relief requested. We will identify these "weapons" as we discuss them.

Number six is within the scope of Rule 74.32, Missouri Rules of Civil Procedure. Mr. Godsy's conception of the breadth of that rule is erroneous. That rule permits a judgment to be set aside for irregularity on the face of the record, but does not permit the introduction of extraneous evidence to invalidate an otherwise valid judgment, Dewey v. Dewey, 544 S.W.2d 857 (Mo.App. 1976); Whitlock v. Whitlock, 395 S.W.2d 468 (Mo.App. 1965). There is absolutely no showing that the judgment of February 15, 1973, was irregular on its face. Therefore, the setting aside of that final judgment cannot be sustained on that ground.

Respondent, Sherman Godsy, also asserts that both pleadings are in the nature of a motion of writ of error coram nobis (number four above). This type of proceeding is predicated upon errors of fact, which facts if correctly known would have prevented the rendition of the judgment, Zahorsky v. Zahorsky, 543 S.W.2d 258 (Mo. App. 1976). A motion for writ of error coram nobis is not intended to authorize any court to review or revise its decrees, Pike v. Pike, 239 Mo. App. 655, 193 S.W.2d 637 (Mo.App. 1946). All of the evidence adduced only tends to prove that the trial court *may* have rendered a different judgment had both parties testified during the divorce proceedings. There is absolutely no showing that Mr. Godsy acquired knowledge of facts, after February 15, 1973, that would have *prevented* the rendition of some judgment on that date. Under the facts here pleaded and adduced, that remedy is not available, Dewey v. Dewey, supra, and the reversal of the judgment cannot be sustained on that ground.

In both pleadings Mr. Godsy asserts the filing of those pleadings within three years and also asserts that Rule 74.32 permits the setting aside of judgments within that

time span. We have already discussed, and ruled, the scope of that rule. We conceive this allegation to be in the nature of a Petition for Review (number two above). Although not brought to our attention by the parties, or to the attention of the trial court, Section 452.110, RSMo., not repealed by the enactment of the Dissolution of Marriage Act, Laws of 1973, Sections 452.300 to 452.415, inclusive, provides, in part, "[N]o petition for review of any judgment for divorce, rendered in any case arising under this chapter, shall be allowed, any law or statute to the contrary notwithstanding." This statute has long been in effect in this State and is fixed public policy, Bernstein v. Bernstein, 351 S.W.2d 46 (Mo.App. 1961). Therefore, that "weapon" is not available in this case, Whitlock v. Whitlock, supra, and the reversal of the judgment cannot be sustained on that ground. There is an additional reason why a petition for review would not be permissible in this case, that being that Mr. Godsy was not in default within the meaning of Rule 74.045 and 74.12 V.A.M.R., he having been duly summoned and filing an answer.

In a proceeding in equity (number one above) and petitioner must plead and prove that the decree was procured by fraud (number five above) and that fraud must relate not to the propriety of the judgment itself but to the manner in which the judgment was obtained, Bernstein v. Bernstein, supra; Reis v. LaPresto, 324 S.W.2d 648 (Mo. 1959); McCarty v. McCarty, 300 S.W.2d 394 (Mo. 1957); Hamphill v. Quigg, 355 S.W.2d 57 (Mo. 1962); Hemphill v. Hemphill, 316 S.W.2d 582 (Mo. 1958); F. v. F., 333 S.W.2d 320 (Mo.App. 1960); Jones v. Jones, 254 S.W.2d 260 (Mo.App. 1953); and Cherry v. Wertheim, 25 S.W.2d 118 (Mo.App. 1930), relied on by respondent in his brief.

All of these cases expound the same general principles as enunciated in the often cited case of Jones v. Jones,

supra, at page 261, as follows: "It is well established that equity has jurisdiction to grant relief against a judgment upon the ground of fraud in its procurement so long as the complaining party is able to show that he himself was free from fault, neglect or inattention to his case. But for the fraud to have existed in the procurement of the judgment, it must have related, not to the propriety of the judgment itself, but to the manner in which the judgment was obtained. In other words, the fraud must have been extrinsic or collateral to the matters which either were or could have been presented and adjudicated in the original proceeding, and not merely intrinsic in the sense of having pertained to the merits of the cause upon which the judgment of the court was rendered. In short, it is not the province of this feature of equitable jurisdiction to afford the losing party a retrial of matters either tried or concluded by the original proceeding, but instead relief is limited to those instances where the fraud was of such a character as to have forestalled an opportunity for the fair submission of the controversy. Of such is the situation where the losing party to an action had a meritorious defense to interpose, but was prevented, without fault on his own part, from setting up his defense by reason of the fraud, deceit or artifice of the successful party. In such an instance the fraud is to be regarded as having been perpetrated, not only upon the losing party, but upon the court as well, and if and when established constitutes a proper ground for equitable relief against the judgment."

As can be plainly discerned from the evidence which we have already delineated, there was no showing that the judgment was procured by fraud. The evidence adduced was, at best, only conflicting for resolution by the trier of the facts. Mr. Godsy's evidence as to property

values and income could have been presented at the trial of the divorce case had he appeared. The same is true as to his pleaded charges of marital misconduct. The disparate property values and amounts of income as testified to by the witnesses is not proof of fraud and is not the kind of testimony that would justify vitiating the judgment, Hupp v. Murphy Finance Co., 502 S.W.2d 345 (Mo. 1973). That testimony is extrinsic or collateral to the matters adjudicated and goes to the propriety of the judgment, not to the manner in which the judgment was obtained. Jones v. Jones, supra; Reis v. LaPresto, supra.

The reasons advanced for defendant and his counsel failing to appear at the scheduled trial setting likewise do not give rise to fraud in the procurement of the judgment. To reach that status the failure to appear must be as a direct result of the deceit and deception practiced by the prevailing party. Jones v. Jones, supra; J. R. Watkins Company v. Hubbard, 343 S.W.2d 189 (Mo.App. 1961); Bogdon v. Commerce Bank of Kansas City, 537 S.W.2d 650 (Mo.App. 1976); Reis v. LaPresto, supra. This evidence could not support the conclusion that defense counsel was deceived by his opponent. Evidence to the contrary has already been enunciated. In addition, there are transcript statements of plaintiff's counsel that he would have acceded to a request for a continuance by any other counsel, leading to the inescapable conclusion that both counsel were acting in the role of professional antagonists enhanced by personal animosity, and were not acting in concert. Prior to defense counsel's departure, his opponent verbally and in writing expressed his intention to seek an adjudication of the divorce action on the scheduled date. Defense counsel could not have been misled in any way so as to justify the setting aside of the judgment on the grounds of fraudulent procurement. Head

v. Ken Bender Buick Pontiac, Inc., 452 S.W.2d 596 (Mo. App. 1970); Falcon Enterprises, Inc. v. Precise Forms, Inc., 509 S.W.2d 170 (Mo.App. 1974). This same evidence is inapposite to proof that defendant was "free from fault, neglect, or inattention to his case" which is a foundation requirement for setting aside the judgment. Jones v. Jones, supra.

Both pleadings also attacked the judgment on the ground that Mr. Godsy was not given notice of the entry of judgment in accordance with Rule 74.78. That rule provides that the "judgment shall be set aside for good cause shown upon motion filed within six months from the entry of the order of judgment" should the clerk of the court fail to give notice of the entry of judgment to defendants who are not in default for failure to appear. Mr. Godsy cannot be granted relief by that rule as he failed to file a motion to set aside the judgment within six months. Further, no prejudice can be demonstrated by lack of such notice as Mr. Godsy had actual knowledge of the entry of judgment as he timely filed a Motion for New Trial. Had he chosen to do so, he could have filed his Motion at the same time. (It being unnecessary to do so, we specifically do not decide if Mr. Godsy was entitled to the notice required by that rule.)

As has been demonstrated, the trial court erred in sustaining the Motion and the Petition. The judgments appealed from in KCD-28689 and KCD-28805 are reversed and remanded with directions to dismiss with prejudice the Motion filed on August 5, 1975, in Circuit Court Case No. 749,413 and to reinstate the judgment of February 15, 1973, and also to dismiss with prejudice the Petition filed in Circuit Court Case No. DR75-4195. That portion of the judgment for attorney fees in the amount of $4,320.00, plus 6% interest from February 15, 1973, and

$5,932.00, plus 6% interest from February 15, 1973, awarded to Mrs. Godsy in the judgment of April 5, 1976 (KCD-28804), being duplicative of the judgment of February 15, 1973, is reversed. That portion of the judgment of April 5, 1976, appointing a Receiver to take charge of the real estate and property owned by the parties is reversed as being moot, the Receiver not having qualified or acted, and also as not being supported by the evidence, Murphy v. Carron, supra.

The attorney fee award in favor of Mrs. Godsy dated April 5, 1975, in the amount of $4,000.00 for services performed by her present counsel likewise is not supported by the evidence, Murphy v. Carron, supra. This being a proceeding in equity, we review the case upon both the law and the evidence and reach our own independent conclusions as to the proper judgment to be entered, Murray v. Murray, 538 S.W.2d 587 (Mo.App. 1976); In Re Marriage of Powers, 527 S.W.2d 949 (Mo.App. 1975). That judgment is reversed and remanded with directions to enter judgment in favor of Mrs. Godsy in the amount of $2,855.00 as of April 5, 1976.

We have studied the briefs and the transcript and are cognizant of and have considered each of the remaining points asserted by the parties. An explication of those points would not alter the disposition we have reached, nor be of precedential value. Rule 84.16(b).

Accordingly, the judgments appealed from are reversed and the cause remanded for the entry of judgments as directed.

All concur.

Donald L. Mason, Special Judge

APPENDIX B

Supreme Court No. 60777

Court of Appeals Nos. 28,869
28,804
28,805

IN THE MISSOURI COURT OF APPEALS
KANSAS CITY DISTRICT

TRANSFER

Nadine Godsy,
Appellant-Respondent,

vs.

Sherman M. Godsy, Jr.,
Respondent-Appellant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed September 8, 1978)

Notice is given that Appellant appeals from the judgment entered in this action on the 3rd day of April, 1978, from the Order of the Missouri Court of Appeals, Kansas City District, on May 1, 1978, overruling Appellant's Motion for Rehearing and Transfer, and the Order of this Court denying Appellant's Application to Transfer on June 15, 1978, all in accordance with Rule 10, Rules of the Supreme Court of the United States.

The party taking the Appeal is Respondent-Appellant, Sherman M. Godsy, Jr. All of the judgment entered in this cause on April 3, 1978, as well as the subsequent

Orders overruling Motions for Rehearing and Transfer, are appealed from. Appellant takes that Appeal pursuant to 28 USC 1257(2) and 28 USC 2101(c).

Koenigsdorf, Kusnetzky & Wyrsch
By: /s/ James R. Wyrsch
1050 Home Savings Building
1006 Grand Avenue
Kansas City, Missouri 64106
Phone: (816) 221-0080
Attorney for Respondent-Appellant

Dated this 8th day of September, 1978.

Copy of the above and foregoing Notice of Appeal delivered on this 8th day of September, 1978, to: THAINE Q. BLUMER, 2010 Traders Bank Building, 1125 Grand, Kansas City, Missouri, Attorney for Appellant-Respondent, Nadine Godsy.

/s/ James R. Wyrsch
Attorney for Respondent-Appellant,
Sherman M. Godsy, Jr.

Supreme Court No. 60777

Court of Appeals Nos. 28,869
28,804
28,805

IN THE SUPREME COURT OF MISSOURI

TRANSFER

Nadine Godsy,
Appellant-Respondent,
vs.
Sherman M. Godsy, Jr.,
Respondent-Appellant.

NOTICE OF APPEAL TO SUPREME COURT OF THE UNITED STATES

Notice is given that Appellant appeals from the judgment entered in this action on the 3rd day of April, 1978, from the Order of the Missouri Court of Appeals, Kansas City District, on May 1, 1978, overruling Appellant's Motion for Rehearing and Transfer, and the Order of this Court denying Appellant's Application to Transfer on June 15, 1978, all in accordance with Rule 10, Rules of the Supreme Court of the United States.

The party taking the Appeal is Respondent-Appellant, Sherman M. Godsy, Jr. All of the judgment entered in this cause on April 3, 1978, as well as the subsequent Orders overruling Motions for Rehearing and Transfer,

are appealed from. Appellant takes that Appeal pursuant to 28 USC 1257(2) and 28 USC 2101(c).

Koenigsdorf, Kusnetzky & Wyrsch
By: /s/ James R. Wyrsch
1050 Home Savings Building
1006 Grand Avenue
Kansas City, Missouri 64106
Phone: 221-0080
Attorney for Respondent-Appellant

Dated this 8th day of September, 1978.

Copy of the above and foregoing Notice of Appeal delivered on this 8th day of September, 1978, to: THAINE Q. BLUMER, 2010 Traders National Bank Building, Kansas City, Missouri, Attorney for Appellant-Respondent, Nadine Godsy.

/s/ James R. Wyrsch
Attorney for Respondent-Appellant,
Sherman M. Godsy, Jr.

APPENDIX C

Nos. KCD 28804
28805
28689

IN THE MISSOURI COURT OF APPEALS

KANSAS CITY DISTRICT

NADINE GODSY,
Appellant-Respondent,

vs.

SHERMAN M. GODSY, JR.,
Respondent-Appellant.

MOTION FOR REHEARING AND/OR TRANSFER

(Filed April 17, 1978)

COMES NOW Sherman Godsy and respectfully moves the Court to set aside its decision and opinion herein and grant a rehearing of this cause, or, alternatively, to transfer this cause to the Supreme Court on the following grounds:

1. The opinion of the Court ignores the importance of the official printed Court Docket sent to Sherman Godsy's attorney showing the case on a "motion docket" and the letter from Nadine Godsy's attorney referring to the hearing of "Motions" on February 13, 1973.

2. The opinion of the Court misstates the law in stating that fraud that will justify setting aside the judgment must be perpetrated by the opposing party and ignores the holding in *Hemphill* v. *Hemphill,* 316 S.W.2d 582 (Mo. 1958).

3. This cause should be transferred to the Supreme Court for re-examination of the question of whether the attorney's neglect should be so rigidly imputed to the client.

4. The opinion ignores the holding of *Murphy* v. *Carron*, 536 S.W.2d 30 (Banc 1976) in that it substitutes the judgment of this Court for that of the trial court by holding that the confusion regarding what was docketed on February 13, 1978 was not an excusable mistake justifying the setting aside of a judgment by a court of equity.

WHEREFORE, Sherman Godsy prays this Court to order a rehearing of this cause, or, alternatively, to transfer this cause to the Supreme Court.

Respectfully submitted,

Koenigsdorf, Kusnetzky & Wyrsch
By /s/ James R. Wyrsch
and
By /s/ Ronald R. Holliger
1050 Home Savings Bldg.
1006 Grand Avenue
Kansas City, Missouri 64106
Telephone: (816) 221-0080
Attorneys for Respondent-Appellant

The undersigned hereby certifies that a copy of the above and foregoing was hand-delivered this 17th day of April, 1978, to: THAINE Q. BLUMER, 1801 Traders Bank Bldg., 1125 Grand Ave., Kansas City, Mo. 64106, Attorney for Appellant-Respondent.

/s/ Ronald R. Holliger

IN THE SUPREME COURT OF MISSOURI

Nos. KCD 28804
28805
28689

NADINE GODSY,
Appellant-Respondent,

vs.

SHERMAN M. GODSY, JR.,
Respondent-Appellant.

APPLICATION FOR TRANSFER TO THE SUPREME COURT OF MISSOURI

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF MISSOURI:

1. Your Petitioner respectfully submits its application for a transfer to review and quash the judgment of the Missouri Court of Appeals, Kansas City District, in a certain cause styled Nadine Godsy, Appellant-Respondent, vs. Sherman M. Godsy, Jr., Respondent-Appellant, Nos. KCD 28,804, 28,805 and 28,689, wherein said Court of Appeals reversed a judgment for the Petitioner herein and remanded the cause to the Circuit Court of Jackson County for entry of judgment in favor of Nadine Godsy, in an opinion by the Honorable Donald L. Mason, Special Judge. Timely motions by the Petitioner for a rehearing and for an order of transfer were overruled by the Missouri Court of Appeals, Kansas City District, on the 1st day of May, 1978.

2. Attached hereto are the opinion of the Missouri Court of Appeals, Kansas City District, "Exhibit 1"; your Petitioner's Motion for Rehearing and for Transfer, "Exhibit 2"; and the order of the Missouri Court of Appeals, Kansas City District, overruling said motions for rehearing

and for transfer, "Exhibit 3". Presented herewith are also suggestions in support of this application, and Petitioner's Notice of Application to opposing counsel and to the Clerk of the Court of Appeals.

3. The cause in question was an action instituted in the Circuit Court of Jackson County by two separate proceedings, subsequently consolidated, filed by your Petitioner herein. On February 15, 1973 a default judgment of divorce was entered for Nadine Godsy against your Petitioner in Division 8 of the Jackson County Circuit Court. Your Petitioner's then counsel subsequently appealed that judgment, but the appeal was dismissed because untimely filed. *Godsy* v. *Godsy*, 521 S.W.2d 449 (Mo.App., 1975). On August 5, 1975, your Petitioner filed a Motion to Set Aside Judgment in the original divorce proceeding, and on the following day, August 6, 1975, filed in a separate independent equity proceeding a Petition to Set Aside Judgment.

4. On February 13, 1976, the Court entered its order sustaining the Motion to Set Aside Judgment filed in the original divorce action, and on April 5, 1976 filed its order sustaining the Petition to Set Aside Judgment in the separate equity proceeding. From those judgments, Nadine Godsy appealed to the Missouri Court of Appeals, Kansas City District. After entry of the order of February 13, 1976, Nadine Godsy filed a "Motion for Attorney's Fees Pendente Lite" and a motion to appoint a receiver of the jointly held property. Subsequently an order granting the attorney's fees and appointing a receiver was entered, from which orders Sherman Godsy, your Petitioner, appealed. All appeals were consolidated in the Missouri Court of Appeals, Kansas City District.

5. The opinion of the Court of Appeals misstates the law in stating that fraud that will justify setting aside

a default judgment just be perpetrated by the opposing party, and alternatively, in so holding is in direct conflict with the decision of this Court in *Hemphill* v. *Hemphill*, 316 S.W.2d 582 (Mo. 1958). The default judgment attacked by your Petitioner's actions on appeal herein was rendered on February 15, 1973. Your Petitioner's then counsel had advised your Petitioner that the matter was or would be continued and that it was not necessary for him to appear that date. Your Petitioner's then counsel left the country at that time and did not appear at the hearing at which the default judgment was entered. The opinion of the court (at p. 13) states that to constitute fraud in the procurement of a judgment "the failure to appear must be as a direct result of the deceit and deception practiced by the prevailing party." Your Petitioner submits that that statement of the law is a misstatement of the law of this State, and alternatively, directly conflicts with the holding of the Supreme Court in *Hemphill, supra.* Therein no contention was made that fraud had been perpetrated by the prevailing party, but rather the fraud was perpetrated *upon the court* by the personal representative of the defaulting party. Your Petitioner submits that the evidence in this cause, as impliedly believed by the trial court herein, clearly showed the type of fraud described in *Hemphill, supra,* and that the opinion of the Missouri Court of Appeals is therefore in conflict with that holding.

6. This cause should be transferred to the Supreme Court for a re-examination of the existing law concerning imputation of an attorney's neglect to his client. The evidence was clear and undisputed that your Petitioner himself was totally free of personal fault or neglect in failing to appear for the hearing. Likewise, the evidence was clear that your Petitioner's then counsel failed to appear, either from his own personal fault or neglect, or by confusion concerning the nature of the hearing and

proceedings scheduled on February 15, 1973. The long-standing rule that the neglect of the attorney is to be imputed to the client is an abomination in modern society. It is a principle which ignores current social trends, and more importantly, demands and expectations of the public from the legal community. This Court should consider whether or not the remedy that a client might theoretically have against his attorney is the only satisfactory remedy for such neglect.

7. The opinion of the Missouri Court of Appeals ignores the holding of *Murphy* v. *Carron,* 536 S.W.2d 30 (banc, 1976), in that it substitutes the judgment of that court for that of the trial court by holding that the confusion existing as to what was docketed for hearing in the trial court on February 15, 1973 was not an excusable mistake that would constitute grounds for the setting aside of a judgment by a court of equity.

WHEREFORE, Petitioner prays this Court to issue its Order of Transfer, directing the Missouri Court of Appeals, Kansas City District, to certify to this Court the record in such mentioned cause, and upon consideration thereof, to quash said judgment of the said Court of Appeals and give such other and further relief as in the premises may appear to be proper.

Koenigsdorf, Kusnetzky & Wyrsch
By /s/ James R. Wyrsch
and
By /s/ Ronald R. Holliger
1050 Home Savings Bldg.
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Telephone: (816) 221-0080
Attorneys for Sherman M. Godsy,
Respondent-Appellant

IMPORTANT NOTICE

MISSOURI COURT OF APPEALS
KANSAS CITY DISTRICT

DATE: May 1, 1978

IN RE: Nadine Godsy vs. Sherman M. Godsy, Jr.

KCD# 28689-804-805

Appellant

Respondent Motion for rehearing overruled. Transfer to Supreme Court denied. See Rule 83.03

cc: Thaine Q. Blumer, James Wyrsch

Mary Louise Thomas, Clerk

NO. 60777

IN THE SUPREME COURT OF MISSOURI

KANSAS CITY DISTRICT NOS. 28804, 28805, & 28689

May Session 1978

TRANSFER

Nadine Godsy,
Respondent,

vs.

Sherman M. Godsy, Jr.,
Appellant.

Now at this day, on consideration of appellant's Application to transfer the above entitled cause from the Kansas City District Court of Appeals, it is ordered that said application, be and the same is hereby denied.

STATE OF MISSOURI—SCT.

I, THOMAS F. SIMON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the May Session thereof, 1978, and on the 15th day of June 1978, in the above entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson City, this 15th day of June 1978.

/s/ Thomas F. Simon Clerk.

/s/ By Janice B. Hanson D. C.